

SUBCOMMITTEE NO. 4

Agenda

Joseph Dunn, Chair
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Agenda -- PART A

Wednesday, May 11, 2005

1:30

Room 2040

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8830 California Law Revision Commission

The primary objective of the California Law Revision Commission (CLRC) is to make recommendations to the Governor and the Legislature for revision of the law. The CLRC assists the Governor and the Legislature in keeping the law up to date by studying complex subjects, identifying major policy questions for legislative attention, gathering the views of interested persons and organizations, and drafting recommended legislation for consideration. The CLRC may study only topics that the Legislature authorizes by concurrent resolution.

Budget Request: The budget proposes expenditures of \$550,000 (\$535,000 General Fund and \$15,000 in reimbursement authority) and 4.0 positions. This amount is \$4,000 greater than estimated expenditures in the current year.

Staff Recommendation. Due to recent budget reductions, the CLRC has eliminated office assistant positions. An augmentation to provide ½ administrative positions would save 40 percent of the time that attorneys spend on administrative functions. Staff recommends approval of an augmentation of \$40,000 for ½ administrative position.

Action

0820 Department of Justice

Issues Proposed for Consent / Vote-Only

1. Hazardous Materials Endorsements.

Finance Letter Request. This Finance Letter requests a reduction of \$3.8 million from special funds to align expenditure authority with available resources. This augmentation was originally included in the 2005-06 Governor's Budget to provide funding for DOJ to collect and process information, fingerprints and fees associated with the hazardous materials endorsement provision of the USA PATRIOT Act, which is administered by the California Department of Motor Vehicles (DMV). As a result of implementation delays, the DMV must utilize a federal Transportation Security Administration agent to collect the information, thus removing the DOJ's involvement in this provision.

2. Reimbursement Authority Reduction.

Finance Letter Request. This Finance Letter requests that reimbursement authority be decreased by \$4 million to reflect the expiration of various Memoranda of Understanding and reductions in grant awards.

3. Reduction in Federal Funds

Finance Letter Request. This Finance Letter requests a reduction of \$44,000 in federal funds. The federal fund expenditure authority was left over from the limited term National Sex Offender Registry program.

4. Legal Services Revolving Fund

Finance Letter Request. This Finance Letter requests a reduction of \$9,090,000 in special fund expenditure authority to align expenditure authority with available resources. This augmentation was included in the 2005-06 Governor's Budget to reflect the DOJ's increased legal services billing rates. This augmentation exceeds the total level of authority needed, based on services that the DOJ expects to provide to its client agencies in fiscal year 2005-06

5. California Methamphetamine Strategy (CALMS)

Finance Letter Request. This Finance Letter requests that a one-time increase of \$3,201,000 from federal funds for the California Methamphetamine Strategy (CALMS) Program.

6. Threat, Analysis, Reporting, and Geographic Evaluation Tool Information System

Finance Letter Request. This Finance Letter requests that a one-time increase of \$2,590,000 from federal funds for the Threat, Analysis, Reporting, and Geographic Evaluation Tool (TARGET) information system.

7. Single-Point Information Collection and Evaluation System

Finance Letter Request. This Finance Letter requests that a one-time increase of \$1,981,000 from federal funds for the Single-Point Information Collection and Evaluation System (SPICES).

8. Technical Adjustment

Finance Letter Request. This Finance Letter requests a technical adjustment to transfer \$270,000 from the Public Rights Division to the Division of Gambling Control to correct a posting error in the 2005-06 Governor's Budget.

9. Office of Training and Professional Development Consolidation

Finance Letter Request. This Finance Letter proposes to redirect \$989,000 and 12.0 positions from the Division of Legal Support and Technology to the Executive Programs Division to consolidate and streamline the DOJ's training resources.

10. Registry of Charitable Trusts

Finance Letter Request. This Finance Letter requests an increase of \$2,104,000 and 6.6 positions to address workload in the Registry of Charitable Trusts Program. As part of the request, reimbursements would be decreased by \$906,000 and General Fund would be reduced by \$410,000. It is further requested that the trailer bill language be adopted to establish the Registry of Charitable Trusts Fund. (Attached in the Appendix).

Staff Recommendation. No issues have been raised regarding the consent / vote-only issues. Staff recommends approval of the consent / vote-only issues.

Action.

0820 Department of Justice

Discussion Issues

1. Corporate Responsibility Unit.

Budget Request. The proposal requests 12.5 positions and \$4.7 million for the Corporate Responsibility Unit. The unit would be self-funded through the Public Rights Division Law Enforcement Fund. Included in this request is an additional \$3 million per year for external consultant support and \$50,000 for out-of-state travel authority above the standard compliment. The DOJ indicates that based on the past successful performance of the Attorney General's Energy Task Force, Consumer Law, and Antitrust Litigation Sections, the resources requested in this proposal will self-fund ongoing activities. The proposal includes trailer bill language clarifying that no General Fund augmentations shall be used for this purpose and budget bill language stating that new positions can not be hired if there are insufficient funds in the Public Rights Law Enforcement Fund. (Special Funds). The trailer bill language is attached in the appendix.

Staff Recommendation. Staff recommends approving this request.

Action.

2. Representation of Franchise Tax Board – Abusive Tax Shelters.

Budget Request. This request proposes an increase of \$721,000 General Fund and 4.9 positions related to representation of the Franchise Tax Board (FTB). SB 614, enacted as Chapter 656, Statutes of 2003 established a state tax compliance program intended to reduce the number of abusive tax shelters and tax avoidance schemes. The DOJ indicates that FTB estimates that at least 10 of the tax shelter claims returns that were deemed claims for refund will be in full litigation in the budget year.

Staff Recommendation. Staff recommends approving this request.

Action.

3. CDC Workload

Finance Letter Request. This Finance Letter requests \$4,156,000 and 29.5 positions to handle increased medical malpractice/deliberate indifference cases received from the California Department of Corrections.

The Tort and Condemnation Section of the DOJ defends state agencies and its employees in lawsuits where personal injury and/or property damage claims are made. DOJ indicates that the number of hours dedicated to CDC's cases has significantly increased over the last five years, from 241 cases in 1999-00 to 449 cases in 2003-04. The DOJ notes that given recent evaluations of the implementation of the *Plata* Remedial Plan (regarding improvements to CDC healthcare services) that significant additional workload will continue on CDC cases.

Staff Recommendation. Staff recommends approval of the Finance Letter.
Action

3. Civil Law Division Workload

Finance Letter Request. This Finance Letter requests \$2,019,000 and 13.1 positions to address workload performed on behalf of the DOJ and the state in the following two areas: (1) legal services related to DOJ's internal matters, such as providing advice and representation in personnel conflicts and defending subpoenas in third-party litigation; and (2) legal services related to non-discretionary programs and duties, such as reviewing initiatives and defending governmental cases against the state.

The DOJ notes that given the reduction to its budget in the last several fiscal years, it is no longer able to continue this workload without an augmentation.

Staff Recommendation. Staff recommends approval of the Finance Letter.
Action

4. Correctional Law Section

Finance Letter Request. This Finance Letter requests \$2,235,000 and 15.3 positions (14.5 personnel years) to handle increased state and federal *habeas corpus* litigation. This request is in addition to an increase of \$1.1 million and 7.7 positions proposed in the January 10 budget.

The DOJ indicates that the additional workload is related to cases involving lifer parole hearings by the BPT and changes in the parole revocation process as a result of the *Valdivia* Remedial Plan.

Staff Recommendation. Staff recommends approval of the Finance Letter.
Action

5. Unfair Competition Law Workload

Finance Letter Request. This Finance Letter requests an increase of \$913,000 and 6.6 positions for workload associated with the Unfair Competition Law (Proposition 64). As part of the January budget, the DOJ proposed \$2.3 million and 10.8 positions for workload resulting from this initiative that passed in November 2004.

The DOJ reports that the staffing previously requested cannot absorb the volume of work that has been identified since the original request. Additionally, the DOJ indicates that in the last several months, courts have found that Proposition 64 applies to pending cases brought by private litigants. These positions would be funded from litigation recoveries obtained for the Unfair Competition Law Fund.

Staff Recommendation. Staff recommends approval of the Finance Letter.
Action

6. Equipment Replacement Project.

Finance Letter Request. This Finance Letter requests \$1 million from the General Fund for a one-time purchase of laboratory equipment for the Bureau of Forensic Services to improve current capabilities and replace outdated, un-repairable equipment used by the lab system. The DOJ reports that it has insufficient baseline equipment authority to acquire and replace scientific equipment.

Previous Action by the Subcommittee. This request is in addition to a request of \$1.5 million related to equipment replacement in the January budget proposal. At the hearing on March 30, the Subcommittee approved the \$1.5 million on a one-time basis and directed DOJ to develop an equipment replacement program.

Staff Recommendation. DOJ indicates that this additional one-time funding is necessary to address immediate accreditation requirements. Staff recommends approval of this Finance Letter request.

Action

0855 California Gambling Control Commission

Finance Letters

1. Compact Workload Augmentation

Finance Letter Request. This Finance Letter amends the January budget request for an augmentation for the Gambling Control Commission (GCC). The 2005-06 budget proposal included an augmentation of \$4,682,000 and 44.6 positions for the GCC to address workload associated with Tribal-State Gaming Compacts. The original proposal is being withdrawn and a revised proposal in the amount of \$2.3 million and 22.1 positions is included in the Finance Letter to address the Commission's workload associated with existing, new, and amended Compacts.

The revised proposal includes the following:

- \$852,000 from the Special Distribution Fund (SDF) and 7 positions to establish and maintain a state gaming test laboratory.
- \$532,000 from the SDF and 5 positions to implement a program for field testing of gaming devices.
- \$245,000 from the SDF and 3 positions for additional audit and compliance resources for new workload and workload associated with the 1999 compacts.
- \$206,000 from the SDF and 3 positions for new workload and workload associated with the 1999 compacts.
- \$239,000 from the SDF and \$103,000 from the Gambling Control Fund and 4.5 positions related to administrative functions and information technology.
- \$85,000 from the SDF and one staff counsel position.

Staff Comments. The LAO has raised some concerns with the portion of the request related to state gaming test laboratory. The new and amended compacts require new gaming devices to be certified by either a private testing lab or a state lab. The GCC indicates that a state gaming lab would give California independence from the gaming industry and would provide internal technological expertise to assist the field testing and audit programs of the GCC.

Analyst's Recommendation. The LAO recommends not approving the state lab request, but providing GCC with two limited-term special consultant positions to provide technical expertise and five limited-term positions for the field testing component. The LAO recommends two-year limited term positions because these are new activities and the level of workload is not yet defined. The LAO also recommends the following Supplemental Report Language requiring CGG to report to the Legislature on its testing program.

The California Gambling Control Commission shall report to the chairs of the budget subcommittees in both houses and the Chair of the Joint Legislative Budget Committee by March 1, 2006 and March 1, 2007 on its testing program. The reports shall include the number of gaming devices tested, the average time to test each gaming device, any types of problems discovered with gaming devices, and how these problems were resolved. The reports shall also include any recommendations for improvements to the testing program.

Staff Recommendation. Consistent with the LAO recommendation, staff recommends approval of the Finance Letter with the following changes – rejection of the funding to establish a state testing lab, approval of the field testing component on a two-year limited-term basis, approval of two special consultant positions to provide technical expertise on a two-year limited-term basis, and approval of supplemental reporting language on the testing program.

Action.

2. Indian Gaming Facility Inspection Verification

Finance Letter Request. This Finance requests an increase of \$276,000 from the Special Distribution Fund to reimburse the Department of General Services (DGS) and the State Fire Marshal for building code and fire safety inspection verification. The state has named DGS as the state's designee to oversee the building/construction provisions of the Compacts.

The GCC indicates that pursuant to all the compacts, the Tribal Gaming Authority must have building and safety experts conduct inspections before issuing a certificate of occupancy; and the state's designee must be given reasonable notice to participate in the inspection. The tribe must correct any condition that does not meet standards required under the compacts. In the event that the state's designee objects to the issuance of the certificate of occupancy, the tribe must make a good faith effort to address the state's concerns, and in the event that the state does not withdraw its objection, the matter proceeds through the compacts dispute resolution process.

Staff Comments. DOF indicates that the funding in the proposal would be sufficient for inspection and validation of two new construction projects. The LAO has raised concerns regarding the justification for funding two inspections.

Staff Recommendation. Staff recommends rejection of the Finance Letter pending additional justification for the number of inspections in the budget year.

Action.

Appendix
Proposed Trailer Bill Language

1. Language related to the Corporate Responsibility Unit

Chapter 876, Statutes of 2003 is amended to read:

SEC. 16. The investigation and enforcement of the provisions contained in Sections 1 to 15, inclusive, of this act shall be accomplished without any duplication of effort on the part of the Attorney General and the Commissioner of Corporations. To the extent that the Attorney General exercises this authority, ~~it shall be done using existing resources, and no future~~ no General Fund budget augmentations shall be made for this purpose.

2. Proposed Trailer Bill Language related to Registry of Charitable Trusts

Section 12587.1 is added to the Government Code, to read:

12587.1. The Registry of Charitable Trusts Fund is hereby established in the State Treasury, to be administered by the Department of Justice. Notwithstanding any other provision of law, all registration fees, registration renewal fees, and late fees or other fee paid to the Department of Justice pursuant to this article, Section 2850 of the Probate Code, or Section 320.5 of the Penal Code shall be deposited in the Registry of Charitable Trusts Fund. Moneys in the fund, upon appropriation by the Legislature, shall be used by the Attorney General solely to operate and maintain the Attorney General's Registry of Charitable Trusts and to provide public access via the internet to reports filed with the Attorney General.